

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARVIN ROY FELDMAN,

Plaintiff,

vs.

POKERTEK, INC.,

Defendant.

2:09-cv-01598-JCM-VCF

MINUTE ORDER

Presently before the court is defendant's Motion to Enforce Settlement Agreement (#83). Plaintiff filed his Opposition to Pokertek, Inc.'s Motion to Enforce Settlement Agreement (#84), and defendant filed its Reply in Support of Pokertek's Motion to Enforce Settlement Agreement (#85).

Rule 12(h)(3) of the Federal Rules of Civil Procedures states, "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

Paragraph 2 of Plaintiff's Complaint (#1) and of Plaintiff's First Amended Complaint (#16) allege, "This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332." Identifying the parties to establish Diversity Jurisdiction, plaintiff alleges in Paragraph 3 of Dockets #1 and #16, "Marvin Roy Feldman ("Feldman") is an American citizen permanently residing in Mexico."

Controlling Ninth Circuit and U. S. Supreme Court Authority holds that in order to be a citizen of a State within the meaning of 28 U.S.C. § 1332, a natural person must both be a citizen of the United States and be domiciled within a state. A United States citizen permanently domiciled in Mexico is

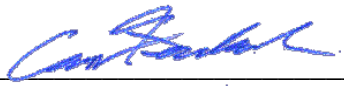
1 neither a “citizen of a state” nor an “alien” for purposes of diversity jurisdiction. *Newman-Green, Inc. v.*
2 *Alfonzo-Larrain*, 490 U.S. 826 (1989); *Brady v. Brown*, 51 F.3d 810 (1995).

3 On this record, it appears that plaintiff Marvin Roy Feldman is “stateless” for purposes of 28
4 U.S.C. § 1332(a)(1) and subsection 28 U.S.C. § 1332(a)(2) cannot confer jurisdiction on this court
5 because plaintiff is a United States citizen.

6 Accordingly, IT IS HEREBY ORDERED that the parties have until March 29, 2013, to file
7 points and authorities establishing that this action is within the subject-matter jurisdiction of this court.

8 IT IS FURTHER ORDERED that any party wishing to oppose positions asserted in the filings
9 due on March 29, 2013, must file a response on or before April 10, 2013.

10 Dated this 13th day of March, 2013.

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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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